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PATENT APPLICATION
10/559,890

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Andreas Schmidt et al.
Serial No.:	10/559,890
Date Filed:	December 6, 2005
Group Art Unit:	2458
Confirmation No.	2852
Examiner:	Rashid, Harunur
Title:	METHOD FOR TRANSMITTING MESSAGES IN AN MMS-BASED COMMUNICATION SYSTEM

MAIL STOP – APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Appellants have appealed to this Board from the final rejection of Claims 29-58 dated October 15, 2010. Appellants filed a Notice of Appeal on December 27, 2010, and filed an Appeal Brief on February 7, 2011, (the “*Appeal Brief*”). The Examiner responded in an Examiner’s Answer mailed June 20, 2011, (the “*Examiner’s Answer*”). Appellants respectfully submit this Reply Brief.

I. REAL PARTY IN INTEREST

This application is currently owned by Siemens Aktiengesellschaft as indicated by an assignment recorded on April 14, 2010, in the Assignment Records of the United States Patent and Trademark Office at Reel 024231, Frame 0504.

II. RELATED APPEALS AND INTERFERENCES

There are no known appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision regarding this appeal.

III. STATUS OF CLAIMS

At the time of the Final Office Action mailed October 15, 2010, Claims 29-58 were pending in this Application, and Claims 1-28 were previously cancelled without prejudice or disclaimer. All pending Claims 29-58 were rejected in the Final Office Action. Appellants present Claims 29-58 for appeal. Appendix A shows all pending claims.

IV. STATUS OF AMENDMENTS

No amendments have been filed subsequent to final rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claim 29 recites a method for transmitting messages in a communication network (KN), (*Originally submitted substitute specification, e.g., page 8, paragraph [0020] to page 10, paragraph [0022]*)

comprising:

transmitting a transmission message (MM1_submit.REQ) containing one or more user data objects (MMA) to a switching component (MRS; MRSA; MRSB) for forwarding to a first telecommunication device (MFG2); (*Originally submitted substitute specification, e.g., page 11, paragraph [0026]*)

creating a plurality of variants (A, B, C) of the one or more user data objects (MMA) in the switching component (MRS; MRSA; MRSB) as a function of one or more parameters; (*Originally submitted substitute specification, e.g., page 13, paragraph [0028] to page 15,*

paragraph [0034]; page 18, paragraph [0050]; page 20, paragraph [0053]; and page 21, paragraph [0056])

and

transmitting a delivery request message (MM1_notification.REQ(s)) to the first telecommunication device (MFG2) informing the first telecommunication device (MFG2) of the availability of the plurality of variants (A, B, C) of the one or more user data objects (MMA) that have been created by the switching component (MRS; MRSA; MRSB) before transmitting the transmission message (MM1_retrieve.RES) to the first telecommunication device (MFG2). *(Originally submitted substitute specification, e.g., page 11, paragraph [0026], page 15, paragraph [0035] to page 18, paragraph [0047], and page 18, paragraph [0049] to page 25, paragraph [0061])*

Independent Claim 56 recites a method for transmitting messages in a communication network (KN), *(Originally submitted substitute specification, e.g., page 8, paragraph [0020] to page 10, paragraph [0022])*

comprising:

transmitting a transmission message (MM1_submit.REQ) containing one or more user data objects (MMA) to a switching component (MRS; MRSA; MRSB), wherein the switching component (MRS; MRSA; MRSB) is operable to forward the transmission message (MM1_submit.REQ) to a first telecommunication device (MFG2) selected from a plurality of different telecommunication devices; *(Originally submitted substitute specification, e.g., page 11, paragraph [0026])*

creating a plurality of variants (A, B, C) of the one or more user data objects (MMA) in the switching component (MRS; MRSA; MRSB) as a function of one or more parameters, wherein the plurality of variants (A, B, C) includes an unaltered version (A) of the one or more user data objects (MMA); *(Originally submitted substitute specification, e.g., page 13, paragraph [0028] to page 15, paragraph [0034]; page 18, paragraph [0050]; page 20, paragraph [0053]; and page 21, paragraph [0056])*

and

before transmitting the transmission message (MM1_retrieve.RES) to said first telecommunication device (MFG2), transmitting a delivery request message (MM1_notification.REQ(s)) to the first telecommunication device (MFG2) by the switching component (MRS; MRSA; MRSB) informing the first telecommunication device (MFG2) of the availability of all variants (A, B, C) of the one or more user data objects (MMA) that have been created by the switching component (MRS; MRSA; MRSB). (*Originally submitted substitute specification, e.g., page 11, paragraph [0026], page 15, paragraph [0035] to page 18, paragraph [0047], and page 18, paragraph [0049] to page 25, paragraph [0061]*)

Independent Claim 57 recites a system for transmitting messages in a communication network (KN), (*Originally submitted substitute specification, e.g., page 8, paragraph [0020] to page 10, paragraph [0022]*)

comprising:

a switching component (MRS; MRSA; MRSB) receiving a transmission message (MM1_submit.REQ) containing one or more user data objects (MMA) for forwarding to a first telecommunication device (MFG2); (*Originally submitted substitute specification, e.g., page 11, paragraph [0026]*)

wherein the switching component (MRS; MRSA; MRSB) is operable to create a plurality of variants (A, B, C) of the one or more user data objects (MMA) as a function of one or more parameters, wherein the plurality of variants (A, B, C) includes an unaltered version (A) of the one or more user data objects (MMA); (*Originally submitted substitute specification, e.g., page 13, paragraph [0028] to page 15, paragraph [0034]; page 18, paragraph [0050]; page 20, paragraph [0053]; and page 21, paragraph [0056]*)

and

wherein the switching component (MRS; MRSA; MRSB) is further operable to transmit a delivery request message (MM1_notification.REQ(s)) to the first telecommunication device (MFG2) informing the first telecommunication device (MFG2) of the availability of the plurality of variants (A, B, C) of the one or more user data objects

(MMA) before transmitting the transmission message (MM1_retrieve.RES) to the first telecommunication device (MFG2). (*Originally submitted substitute specification, e.g., page 11, paragraph [0026], page 15, paragraph [0035] to page 18, paragraph [0047], and page 18, paragraph [0049] to page 25, paragraph [0061]*)

Independent Claim 58 recites a telecommunication device (MFG1; MFG2) for transmitting and receiving messages in a communication network (KN), (*Originally submitted substitute specification, e.g., page 8, paragraph [0020] to page 10, paragraph [0022]*)

wherein the telecommunication device (MFG1; MFG2) is operable:

to receive a delivery request message (MM1_notification.REQ(s)) from a switching component (MRS; MRSA; MRSB), wherein the switching component (MRS; MRSA; MRSB) is operable to receive a transmission message (MM1_submit.REQ) containing one or more user data objects (MMA) for forwarding to the telecommunication device (MFG2), wherein the switching component (MRS; MRSA; MRSB) is furthermore operable to create a plurality of variants (A, B, C) of the one or more user data objects (MMA) as a function of one or more parameters, and to transmit the delivery request message (MM1_notification.REQ(s)) to the telecommunication device (MFG2) informing the telecommunication device (MFG2) of the availability of the plurality of variants (A, B, C) of the one or more user data objects (MMA) that have been created by the switching component (MRS; MRSA; MRSB) before transmitting the transmission message (MM1_retrieve.RES) to the first telecommunication device (MFG2), to select at least one of said variants (A, B, C), and to receive a delivery message (MM1_retrieve.RES) containing the requested at least one variant (A, B, C) of the one or more user data objects (MMA) from the switching component (MRS; MRSA; MRSB). (*Originally submitted substitute specification, e.g., page 11, paragraph [0026], page 15, paragraph [0035] to page 18, paragraph [0047], and page 18, paragraph [0049] to page 25, paragraph [0061]*)

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 29-31, 34-41, 45, and 56-58 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Mostafa* (U.S. 2003/0154300) in view of *Shinohara* (U.S. 2002/0132608).

Claims 32 and 33 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Mostafa* and *Shinohara* as applied above claim, in view of *Kalra* (U.S. 5,953,506).

Claims 43 and 43 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Mostafa* and *Shinohara* as applied above claim, in view of *Puskala* (U.S. 2002/0165024).

Claims 44 and 46-55 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Mostafa* and *Shinohara* as applied above claim, in view of *Prenzel* (U.S. 2003/0096598).

VII. ARGUMENT

In addition to the argument presented in the Appeal Brief which are hereby incorporated by reference, Appellants reply to the Examiner's Answer as follows:

Appellant stated that *Mostafa* fails to disclose that the network components provide for a plurality of variants of the multimedia message. In the *Examiner's Answer*, the Examiner sustained the final rejection. In the response to Arguments section, the Examiner stated that the combination of *Mostafa* and *Shinohara* allegedly discloses the features of claims 29, 56, 57, and 58. (*Examiner's Answer*, page 26, section 10.2) Appellants respectfully disagree.

In his reasoning, the Examiner states:

For example, Mostafa discloses notify the recipient that a plurality of variants are available "according to 3GPP TS 23.140, release 4, the standard MMS notification message, used to inform an intended recipient user agent that a multimedia message is available for download, must be modified in such a way as to provide particulars of a streamable multimedia component to be downloaded" ([0029])

(*Examiner's Answer*, page 26, last paragraph to page 27, line 3) According to this citation *Mostafa* merely states that a standard MMS notification message must be modified to provide particulars of a streamable multimedia component. This statement could only be interpreted to read on the claim limitation of providing a plurality of variants if "a streamable multimedia

component” is interpreted as such. However, such an interpretation is unreasonable because a streamable multimedia component is nothing else than a single component in a specific format. Other than that *Mustafa* merely teaches to modify the standard notification message to inform that a different type of message is available. *Mustafa* clearly does not teach that a plurality of variants of a multimedia message is available.

With respect to *Shinohara*, the Examiner states:

Furthermore secondary reference Shinohara discloses "each of mobile telephones 10.sub.1-10.sub.A [sic] has the capability to receive text data of format T1, graphics data of format G1, video data of format V1, and audio data of format A 1 (multimedia data of format 1) The connection of an external terminal enables an extension of the range of data formats that each of mobile telephones 10.sub.1-10.sub.A [sic] can receive" ([0039], also see [0047], [0045]-[0046]). In addition, Shinohara also discloses, "mobile telephone 10.sub.2 [sic] and mobile telephone 10.sub.A [sic] are able to receive data of format 2, but mobile telephone 10.sub.3 [sic] is able to receive only video data of format V1.

(Examiner's Answer, page 27, lines 3 - 9) According to this citation, *Shinohara* merely teaches that a receiving device such as a mobile telephone may be capable of receiving certain data with a specific format, for example mobile telephones 10₁ and 10₄ can receive data of format 2 whereas telephone 10₃ can only receive video data of format V1. (*Shinohara* par. [0045]) *Shinohara* does not teach to create multiple variants of the multimedia message and inform a recipient that the different variants are available for download. Rather, *Shinohara* teaches:

MMS user database server 30 therefore transmits to mobile telephone 10₁ the determination result that mobile telephone 10₃ is unable to receive data of format 2 as well as the information that the only format that mobile telephone 10₃ can receive is format 1 (text T1, graphics G1, video V1, and audio A1)"

(*Shinohara*, par. [0045]). Thus, at best it is the sender that is informed that one of the receiving telephones is not capable of receiving the multimedia message along with information what type of formats this device can receive. The user can then select one of multiple option how to proceed. For example, he can exclude telephone 10₃, send the message anyway to all devices, or modify the message to a format that all recipients can process. (*Shinohara*, par. [0046])

At no time in the entire procedure taught by *Shinohara* are multiple variants of a multimedia message created let alone is a recipient informed that multiple variants are available for download.

The Examiner further stated:

In paragraph 0047 Shinohara discloses "MMS user database server 30 both holds the multimedia message in MMS servers 50.sub.1-50.sub.3 [sic] according to each media type and reports the incoming call to notify mobile telephones 10.sub.2-10.sub.4 [sic] that are the finally determined destinations that a multimedia message has arrived. MMS user database server 30 also notifies mobile telephone 10.sub.3[sic] that video data that are included in the arrived multimedia message is of format V2, which cannot be received" ([0048]).

(Examiner's Answer, page 27, lines 15-21) The Examiner clearly misstates *Shinohara* and tries to create the impression that the *Shinohara* system creates different versions of the message on servers 50₁ - 50₃. In fact the entire paragraph cited above reads:

Upon receiving from mobile telephone 10₁ the multimedia message of the format that was finally determined for transmission at mobile telephone 10₁, MMS user database server 30 both holds the multimedia message in MMS servers 50₁-50₃ according to each media type and reports the incoming call to notify mobile telephones 10₂-10₄ that are the finally determined destinations that a multimedia message has arrived. MMS user database server 30 also notifies mobile telephone 10₃ that video data that are included in the arrived multimedia message is of format V2, which cannot be received.

(*Shinohara*, par. [0045]) (*emphasis added*).. The underlined section above is the section the Examiner omitted in his citation. Thus, it is only the original message which will be stored in one of the servers according to its format. No creation of multiple variants takes place. This is confirmed by the fact that telephone 10₃ is actually informed that it will not be able to process the video data of this multimedia message.

Shinohara further explains:

"Because an incoming call notice has been transmitted to mobile telephone 10₃ that includes the information that video data of format V2 that cannot be received are included in the multimedia message that has arrived, the user of mobile telephone 10₃ decides whether or not to receive the video data. If the user decides to receive the video data, the user transmits a reception request for the multimedia message after first connecting an external terminal to enable reception of video data of format V2. If the user decides to receive only the data other than the video data and decides that

there is no need to receive the video data, the user may receive the multimedia message without connecting the external terminal".

(*Shinohara*, par. [0048]) (emphasis added). According to this paragraph, the only options left for telephone device 10₃ are to either not receive the video file or to use an external terminal to enable reception of the video file. This cannot be interpreted as storing different variants of a multimedia file wherein a recipient can choose one of the options. It is the recipient which has to decide whether to involve an external terminal or not to be able to process a video. It is therefore an external terminal that will display this video and not the mobile telephone 10₃. Moreover, there no selection of different versions of a media message takes place because only one version of the multimedia message is stored on the server. (*Shinohara*, par. [0063]. Any other interpretation as proposed by the Examiner is entirely unreasonable and not supported by the evidence on record.

The remaining arguments presented by the Examiner are merely repletion of the above discussed citations of *Shinohara* or *Mostafa*. Thus, regarding section 10.3-10.5 of the *Examiner's Answer* the above arguments apply correspondingly. Thus, *Shinohara* clearly fails to close the gap left by *Mostafa* because it fails to teach to create multiple variants of a multimedia message and offer the recipients the option to select one of the variants.

For this reason, Applicant believes that a combination of *Mostafa* and *Shinohara* as proposed by the Examiner cannot render the present independent claims obvious. Applicants respectfully submit that the dependent Claims are allowable at least to the extent of the independent Claim to which they refer, respectively.

SUMMARY

Appellants respectfully request to reverse the decision of the Examiner rejecting claims 29-58 of the pending application.

Appellants believe there are no additional fees due at this time, however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-4871 of King & Spalding L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Appellants' attorney at 512-457-2025.

Respectfully submitted,
KING & SPALDING LLP
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Date: August 19, 2011

SEND CORRESPONDENCE TO:

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512-457-2025

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APPENDIX A - CLAIMS INVOLVED IN APPEAL

1-28. (Cancelled)

29. (Previously Presented) A method for transmitting messages in a communication network, comprising:

transmitting a transmission message containing one or more user data objects to a switching component for forwarding to a first telecommunication device;

creating a plurality of variants of the one or more user data objects in the switching component as a function of one or more parameters; and

transmitting a delivery request message to the first telecommunication device informing the first telecommunication device of the availability of the plurality of variants of the one or more user data objects that have been created by the switching component before transmitting the transmission message to the first telecommunication device.

30. (Previously Presented) The method according to claim 29, further comprising:
selecting a specific variant of the one or more user data objects and transmitting said selection from the first telecommunication device to the switching component; and

transmitting a delivery message containing the requested variant of the one or more user data objects from the switching component to the first telecommunication device.

31. (Previously Presented) The method according to claim 29, wherein the step of informing the first telecommunication device comprises:

generating respective recipient notification messages assigned to a specific variant of the one or more user data objects; and

transmitting the respective recipient notification messages from the switching component to the first telecommunication device.

32. (Previously Presented) The method according to claim 29, wherein the parameters include parameters with information about the individual characteristics of the telecommunication device and in particular about applications provided on the telecommunication device.

33. (Previously Presented) The method according to claim 29, wherein the parameters include parameters with information about the individual preferences of the recipient.

34. (Previously Presented) The method according to claim 29, wherein the parameters include parameters with descriptive information, which includes the significance of user data objects contained in the transmission message and/or the relationships between contained user data objects.

35. (Previously Presented) The method according to claim 29, wherein the transmission message is transmitted from a second telecommunication device to the switching component.

36. (Previously Presented) The method according to claim 35, wherein the transmission message, delivery request message, delivery message, and recipient notification messages are transmitted in the context of the multimedia messaging service between the first telecommunication device and the switching component and/or the second telecommunication device and the switching component.

37. (Previously Presented) The method according to claim 35, wherein the messages to and from the first telecommunication device and/or the second telecommunication device are sent via an air interface.

38. (Previously Presented) The method according to claim 35, wherein the first and/or second telecommunication device comprises a radio module.

39. (Previously Presented) The method according to claim 35, wherein messages to and from the first and/or second telecommunication device are transmitted by means of the WAP protocol WSP and/or the hypertext transfer protocol.

40. (Previously Presented) The method according to claim 29, wherein the first telecommunication device is part of a first telecommunication network.

41. (Previously Presented) The method according to claim 40, wherein the first telecommunication network is configured as a mobile radio network, operating according to the GSM, GPRS, EDGE, UMTS, or CDMA standard.

42. (Previously Presented) The method to claim 40, wherein the switching component is configured as part of a second telecommunication network coupled to the first telecommunication network, which operates under the hypertext transfer protocol.

43. (Previously Presented) The method according to claim 42, wherein the first and second telecommunication networks are coupled together by a WAP gateway.

44. (Previously Presented) The method according to claim 31, wherein at least one of the recipient notification messages is transmitted to the telecommunication device by WAP push.

45. (Previously Presented) The method according to claim 29, wherein the switching component is configured as an MMS relay server.

46. (Previously Presented) The method according to claim 31, wherein the recipient notification messages, which are assigned to variants of user data objects of a specific transmission message, comprise specific standard identification information.

47. (Previously Presented) The method according to claim 46, wherein the recipient notification messages, which are assigned to variants of user data objects of a specific transmission message, further comprise total information, indicating the total number of recipient notification messages generated by the switching component for the variants of the one or more user data objects of a transmission message.

48. (Previously Presented) The method according to claim 47, wherein different recipient notification messages have sequence information, which contains the sequence of the variants of the one or more user data objects generated by the switching component.

49. (Previously Presented) The method according to claim 31, wherein the different recipient notification messages have differentiation information, which indicates whether a variant of a user data object assigned to a respective recipient notification message is the original variant contained in the transmission message or a modified variant.

50. (Previously Presented) The method according to claim 48, wherein the sequence information in the different recipient notification messages indicates which of the recipient notification messages relates to the unmodified original version of the at least one user data object or the transmission message.

51. (Previously Presented) The method according to claim 48, wherein the identification information and/or the total information and/or the sequence information is provided under a respectively independent header field in a recipient notification message.

52. (Previously Presented) The method according to claim 48, wherein the identification information and/or the total information and/or the sequence information together is coded in a recipient notification message.

53. (Previously Presented) The method according to claim 48, wherein the identification information and/or the total information and/or the sequence information is processed by the first telecommunication device on receipt of a respective recipient notification message.

54. (Previously Presented) The method according to claim 52, wherein the variants for transmission by the switching component are displayed on a user interface so that a user can select one or more variants and request transmission by the switching component.

55. (Previously Presented) The method according to claim 53, wherein the user data objects contain text information, audio information, video information, executable programs, software modules or a combination of such information.

56. (Previously Presented) A method for transmitting messages in a communication network, comprising:

transmitting a transmission message containing one or more user data objects to a switching component, wherein the switching component is operable to forward the transmission message to a first telecommunication device selected from a plurality of different telecommunication devices;

creating a plurality of variants of the one or more user data objects in the switching component as a function of one or more parameters, wherein the plurality of variants includes an unaltered version of the one or more user data objects; and

before transmitting the transmission message to said first telecommunication device, transmitting a delivery request message to the first telecommunication device by the switching component informing the first telecommunication device of the availability of all variants of the one or more user data objects that have been created by the switching component.

57. (Previously Presented) A system for transmitting messages in a communication network, comprising:

a switching component receiving a transmission message containing one or more user data objects for forwarding to a first telecommunication device;

wherein the switching component is operable to create a plurality of variants of the one or more user data objects as a function of one or more parameters, wherein the plurality of variants includes an unaltered version of the one or more user data objects; and

wherein the switching component is further operable to transmit a delivery request message to the first telecommunication device informing the first telecommunication device of the availability of the plurality of variants of the one or more user data objects before transmitting the transmission message to the first telecommunication device.

58. (Previously Presented) A telecommunication device for transmitting and receiving messages in a communication network, wherein the telecommunication device is operable:

to receive a delivery request message from a switching component, wherein the switching component is operable to receive a transmission message containing one or more user data objects for forwarding to the telecommunication device, wherein the switching component is furthermore operable to create a plurality of variants of the one or more user data objects as a function of one or more parameters, and to transmit the delivery request message to the telecommunication device informing the telecommunication device of the availability of the plurality of variants of the one or more user data objects that have been created by the switching component before transmitting the transmission message to the first telecommunication device,

to select at least one of said variants, and

to receive a delivery message containing the requested at least one variant of the one or more user data objects from the switching component.

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APPENDIX B - EVIDENCE

NONE

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APPENDIX C: RELATED PROCEEDINGS

NONE